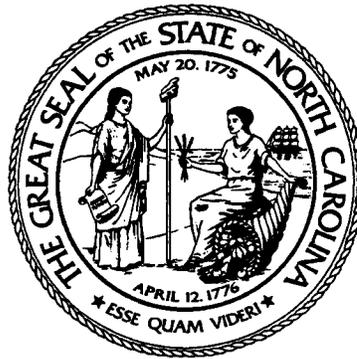


LEGISLATIVE RESEARCH COMMISSION

Executive Budget Act Revision



REPORT TO THE  
1995 GENERAL ASSEMBLY  
OF NORTH CAROLINA  
1996 REGULAR SESSION

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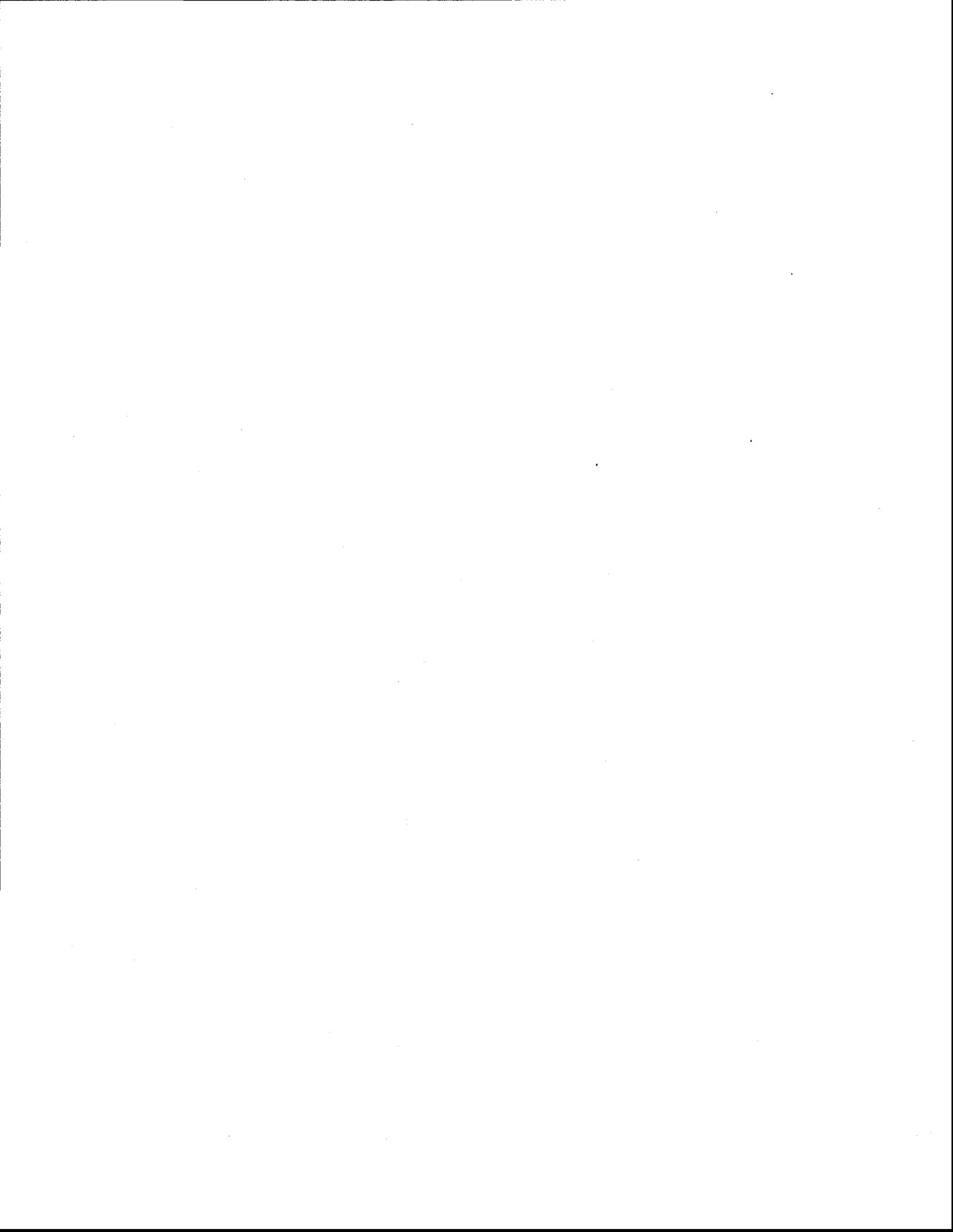
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STATE OF NORTH CAROLINA  
LEGISLATIVE RESEARCH COMMISSION  
STATE LEGISLATIVE BUILDING  
RALEIGH 27611



May 1, 1996

TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY (REGULAR SESSION 1996):

The Legislative Research Commission herewith submits to you for your consideration its interim report on the revision of the Executive Budget Act and the budget process. The report was prepared by the Legislative Research Commission's Committee on Executive Budget Act Revision pursuant to G.S. 120-30.17(1).

Respectfully submitted,

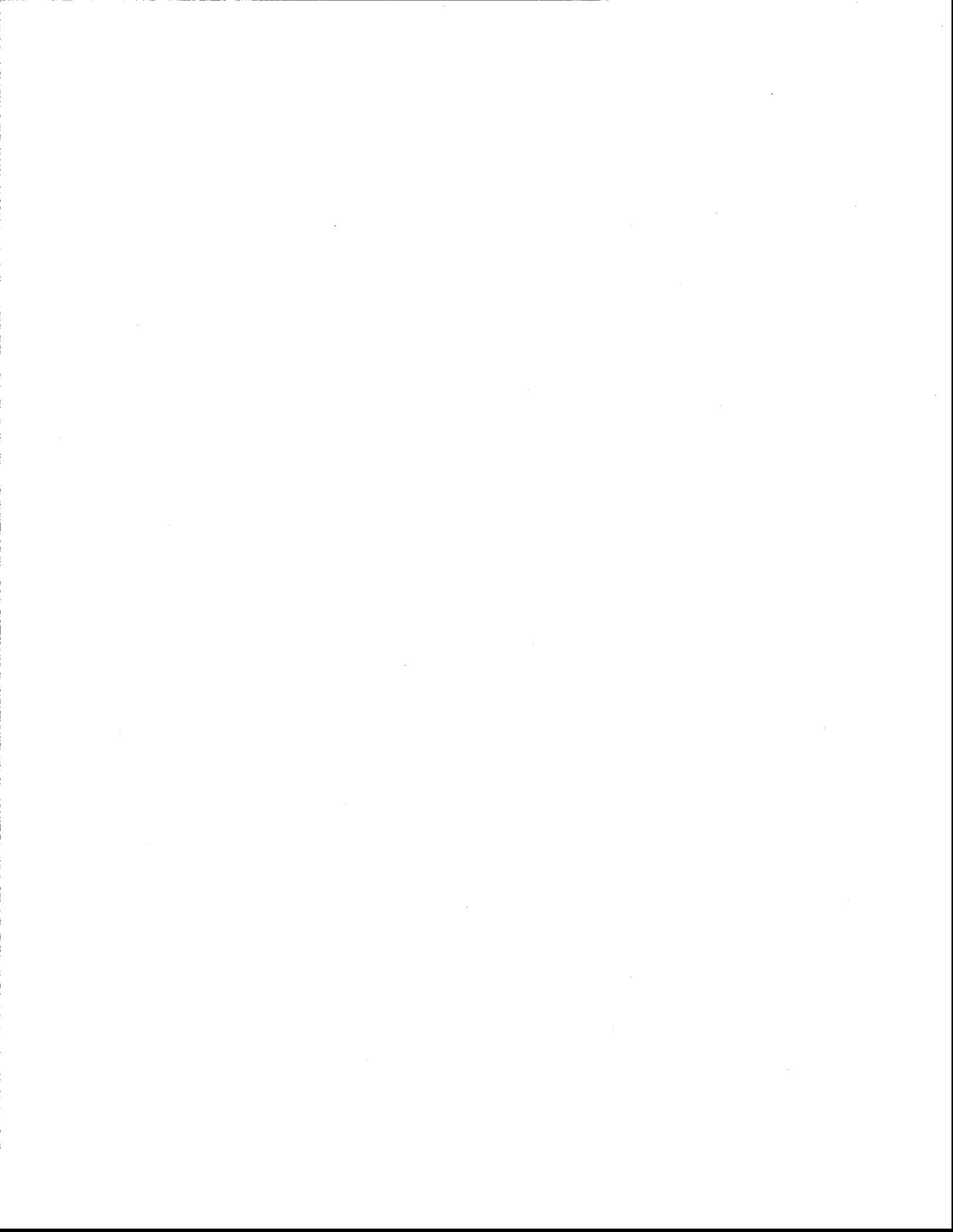
A handwritten signature in cursive script, appearing to read "Harold E. Brubaker", written over a horizontal line.

Harold E. Brubaker  
Speaker of the House

A handwritten signature in cursive script, appearing to read "Marc Basnight", written over a horizontal line.

Marc Basnight  
President Pro Tempore

Cochair  
Legislative Research Commission



1995-1996

LEGISLATIVE RESEARCH COMMISSION

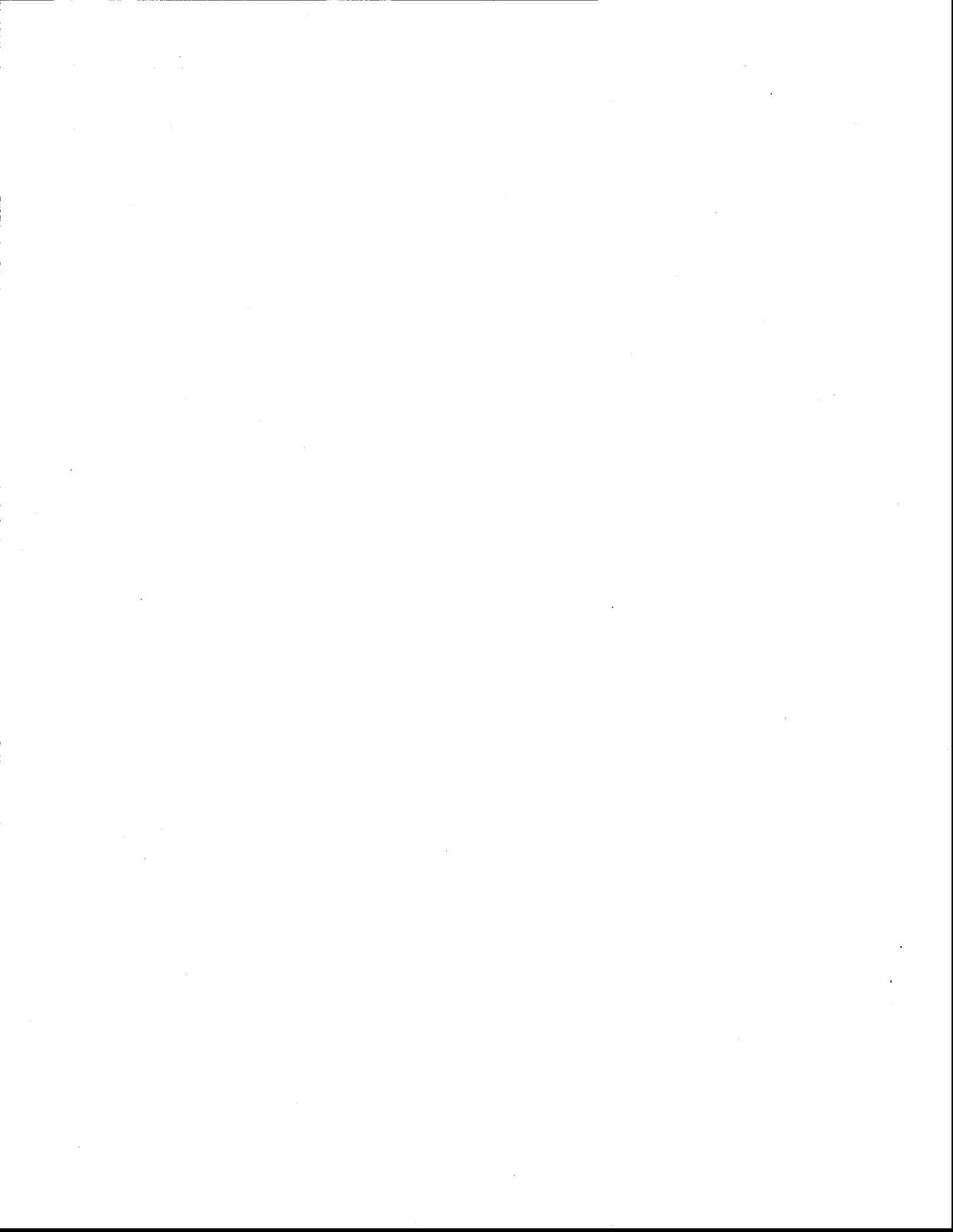
MEMBERSHIP

President Pro Tempore of  
the Senate  
Marc Basnight, Cochair

Senator Frank W. Ballance, Jr.  
Senator R. L. Martin  
Senator Henry McKoy  
Senator J. K. Sherron, Jr.  
Senator Ed N. Warren

Speaker of the House  
of Representatives  
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Rep. Jerry C. Dockham  
Rep. Larry Linney  
Rep. Edd Nye  
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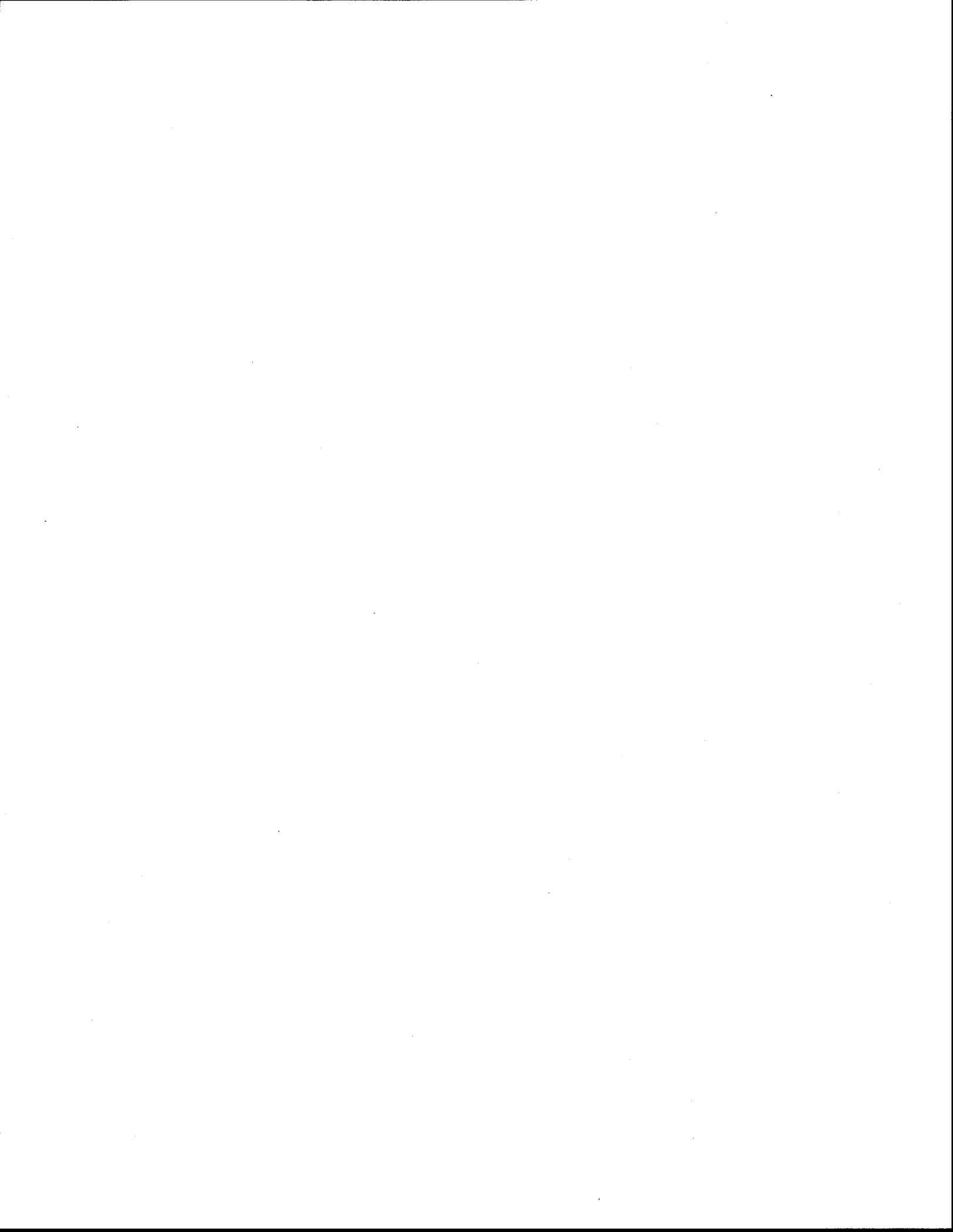


## **PREFACE**

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1995 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of the revision of the Executive Budget Act and the budget process was authorized by Section 2.2 of Chapter 542 of the 1995 Session Laws. The relevant portions of Chapter 542 are included in Appendix A. The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Executive Budget Act Revision area. The Committee was chaired by Senator Aaron W. Plyler and Representative Lyons Gray. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.



## COMMITTEE PROCEEDINGS

The Executive Budget Act Study Committee met five times before the convening of the 1996 Session of the 1995 General Assembly. Its charge proved to be a formidable task. The authorizing legislation directed the Committee to study two issues:

The State's laws and policies on the budget process and any other matters it considers necessary in order to recommend a complete revision of the Executive Budget Act.

The constitutional requirement of separation of powers as it relates to proposing, enacting, and executing a State budget and as it relates to the gubernatorial veto.

To accomplish its difficult task, the Committee decided to address the issues separately.

### **Executive Budget Act Revision**

The Committee met with John Sanders, a former faculty member at the Institute of Government, as well as the State Treasurer, the State Auditor, the State Controller, and the State Budget Officer, to discuss the Executive Budget Act and the budgetary process. Since 1925, the Executive Budget Act has been the State's current procedure for preparing, reviewing, adopting, and executing the State Budget. The Act has been modified in a "piecemeal" fashion through the years, making it difficult to gain a clear understanding of the scheme that it establishes for the preparation and execution of the budget. After some discussion, the Committee asked Mr. Sanders to begin preparing an editorial revision of the Executive Budget Act that accurately reflects current budgetary procedures and practices. The Committee plans to resume work on this issue after the short session.

### **Budget Adjustment and Allocation Commission**

The Committee focused most of its attention on the second issue: the constitutional requirement of separation of powers as it relates to the execution of the budget and the gubernatorial veto. In 1981, the General Assembly tried to provide oversight over the adopted budget by allowing a legislative commission to have approval power over some of the Governor's actions relating to budget transfers and federal funds. The North Carolina Supreme Court ruled in Advisory Opinion In re Separation of Powers, 305 N.C. 767 (1982), that the legislative commission's power to approve budget transfers violated the provisions of Article III, Section 5(3) of the North Carolina Constitution, which provides that the Governor is to administer the budget as enacted by the General Assembly, and thus violated the separation of powers doctrine of Article I, Section 6 of the North Carolina Constitution.

The Executive Budget Act has been repeatedly amended to protect the integrity of the enacted budget while granting essential flexibility to the Governor. The anticipation of the gubernatorial veto sheds a new light on this issue and promises to alter the balance of power between the legislative and executive branches. The Committee considered many legislative alternatives. The Committee has a proposal requiring that some budget authority delegated to the Governor be exercised in conjunction with a legislative committee. This recommendation is included in Legislative Proposal II. Because of the Supreme Court Advisory Opinion In re Separation of Powers, the implementation of this legislation would require an amendment to the North Carolina Constitution. Therefore, the Committee recommends that the voters have the opportunity to vote on a constitutional amendment that will allow the General Assembly to appoint a commission that may work with the Governor in certain specified instances when the budget enacted by the General Assembly needs to be adjusted. This recommendation is contained in Legislative Proposal I. Also included in the report in Appendix E is a minority report prepared by Representative Gene Arnold. Representative Arnold was authorized by the Committee at its last meeting to prepare a minority report.

## FINDINGS AND RECOMMENDATIONS

The Executive Budget Act Revision Committee is charged under Section 2.2 of Chapter 542 of the 1995 Session Laws to study the Executive Budget Act and the State's budget process. In its study the Committee is authorized to consider this State's and other states' laws and policies on the budget process and any other matters it considers necessary. The Committee is specifically required in the authorizing legislation "to address the constitutional requirement of separation of powers as it relates to proposing, enacting, and executing a State budget and as it relates to the gubernatorial veto."

The Committee weighed the potential impact a gubernatorial veto may have when coupled with the current budgetary powers that the General Assembly has delegated by law to the Governor. The Committee did not debate the merits of gubernatorial veto *per se*, since the decision to place that issue before the voters was settled in the 1995 Session. Instead, members considered the relationship between veto power and fiscal policy, including financial accountability, sound business practice, and "powers of the purse" assigned by the State Constitution.

Article V, Section 7 of the North Carolina Constitution establishes the legislature's "power of the purse." That provision provides that funds cannot be withdrawn from the State treasury except through an act of appropriation by the General Assembly.

Case law interpreting this Article of the State Constitution is clear with regard to the role of the General Assembly and the State's finances. In State v. Davis (270 N.C. 1), the North Carolina Supreme Court citing Article V, Section 7 stated, "... this section states in language which no man can misunderstand that the legislative power is supreme over the public purse."

The North Carolina Supreme Court has also made it clear that Article V, Section 7 of the North Carolina Constitution applies to all funds deposited in the State treasury. In Gardner v. Board of Trustees (226 N.C. 465), the Court held that, "[m]oneys paid into the hands of the State Treasurer by virtue of a State law become public funds for which the Treasurer is responsible, and may be disbursed only in accordance with legislative authority."

Under Article III, Section 5 of the North Carolina Constitution the Governor is required to administer the budget adopted by the General Assembly. "The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period. The budget as enacted by the General Assembly (emphasis added) shall be administered by the Governor." (Article III, Section 5, N.C. Constitution)

The "budget enacted by the General Assembly" is based on information that may be outdated by the time the budget year begins. Unanticipated events, including occasional emergencies, may occur during the budget year. As a practical matter, it may be prudent in some urgent circumstances to

amend the enacted budget. Since the enacted budget is in the form of a law, it would appear that such adjustments could only be made by the General Assembly. However, the General Assembly may not be in session when urgent circumstances arise.

In Advisory Opinion In Re Separation of Powers (305 N.C. 767) the North Carolina Supreme Court advised that the General Assembly cannot delegate its budget-related powers to a legislative committee, but can only wield those powers in full session. This opinion denies the option, used in several states, of creating a legislative commission with authority to approve adjustments to the enacted budget — a commission that can act during the legislative interim. In its study the Committee noted that at least seventeen other states have created a legislative body to act regarding budget adjustments when the legislature is not in session. Other states have an advisory group on these matters; some have a full time legislature to act, and others set percentage or dollar limits.

In the shadow of these considerations, the General Assembly faces a difficult choice. It might simply leave the matter of budget adjustments unattended, putting at risk the Governor's capacity to deal with unforeseen fiscal demands. Or, it might allow the Governor to make certain limited adjustments without legislative approval. In fact, the latter course has been chosen. The General Assembly, through the Executive Budget Act and the appropriations bills, has given the Governor power to adjust appropriations by transfer of funds, spending overrealized receipts, creating new capital projects from receipts, and through the use of several other options. The Executive Budget Act's language permitting the Governor to change the enacted budget under prescribed conditions is a delegation of legislative power to the executive branch, an attempt by the General Assembly to respond to the need for some flexibility. In addition, each appropriation act carries "boiler plate" provisions granting similar authority, another delegation of legislative power. Delegation of a vital power so clearly assigned to the legislature by the Constitution cannot be achieved without some apprehension. Uneasy legislators have repeatedly changed the Executive Budget Act, looking for language that seems to protect the integrity of the enacted budget while granting essential flexibility to the Governor. Discussion has become more intense with the decision to place the gubernatorial veto question before voters.

There are a number of dynamics that account for the growing interest in budget oversight by the legislature in this State. Those include the growth of State budgets, the complexity of State programs, the 1991 fiscal problems, and the potential cutbacks by the federal government. Pursuing this further, the Committee noted a number of significant budget changes that governors have made in recent years to the budget as enacted by the General Assembly without any debate or discussion by the General Assembly. A list of some of those budget changes follows:

1. Created by Executive Order in 1980 the Microelectronics Center of North Carolina. Funded by an allotment from the Contingency and Emergency Fund of \$972,360 and a \$250,000 grant from General Electric. In addition \$1,549,773 was carried forward from the budgets of UNC-Chapel Hill and NC State in 1979-80. The General Assembly was asked the following year to appropriate almost \$25 million for 1981-83 to continue this project.

2. Paydays for teachers and state employees were moved in order to balance the budget. General Assembly had to appropriate about \$350 million over a two-year period to correct this action.
3. Approximately \$144 million in capital projects was reverted. Many of these had to be restored by the General Assembly.
4. \$47 million was taken from the Health Premium Reserve. These funds have not been reappropriated.
5. Contracts were signed to house prisoners out-of-state with funds from lapsed salaries being used. The General Assembly appropriated over \$33 million in 1993 to house prisoners in out-of-state correctional facilities and in local jails.
6. Miscellaneous:
  - Contingency & Emergency Funds were used to purchase a gold coin collection...\$270,000
  - \$250,000 appropriated to the Department of Commerce for planning for development of a technology extension project was transferred to the Department of Administration to establish the North Carolina Alliance for Competitive Technologies. The General Assembly will be asked in 1996 to provide funding to continue this staff of three people.
  - of the \$1,000,000 appropriated to the Department of Commerce for matching federal funds that would stimulate technology development was used by the Office of State Planning to Coordinate the Telemedicine Project, a product of the Information Highway.
  - Funds appropriated to the Department of Commerce for marketing the Global Transpark have been transferred to the Global Transpark Authority, a separate entity (\$421,771)

Expectations are that the constitutional amendment establishing the veto will be adopted. The veto will alter the balance of power between the legislative and executive branches. Among its many effects will be its sudden stabilizing influence on the Executive Budget Act. Legislative leaders accustomed to changing the Executive Budget Act easily and often will now face a potential veto to any change that might diminish gubernatorial prerogatives. Delegations of power that have been carelessly extended can no longer be gracefully retrieved.

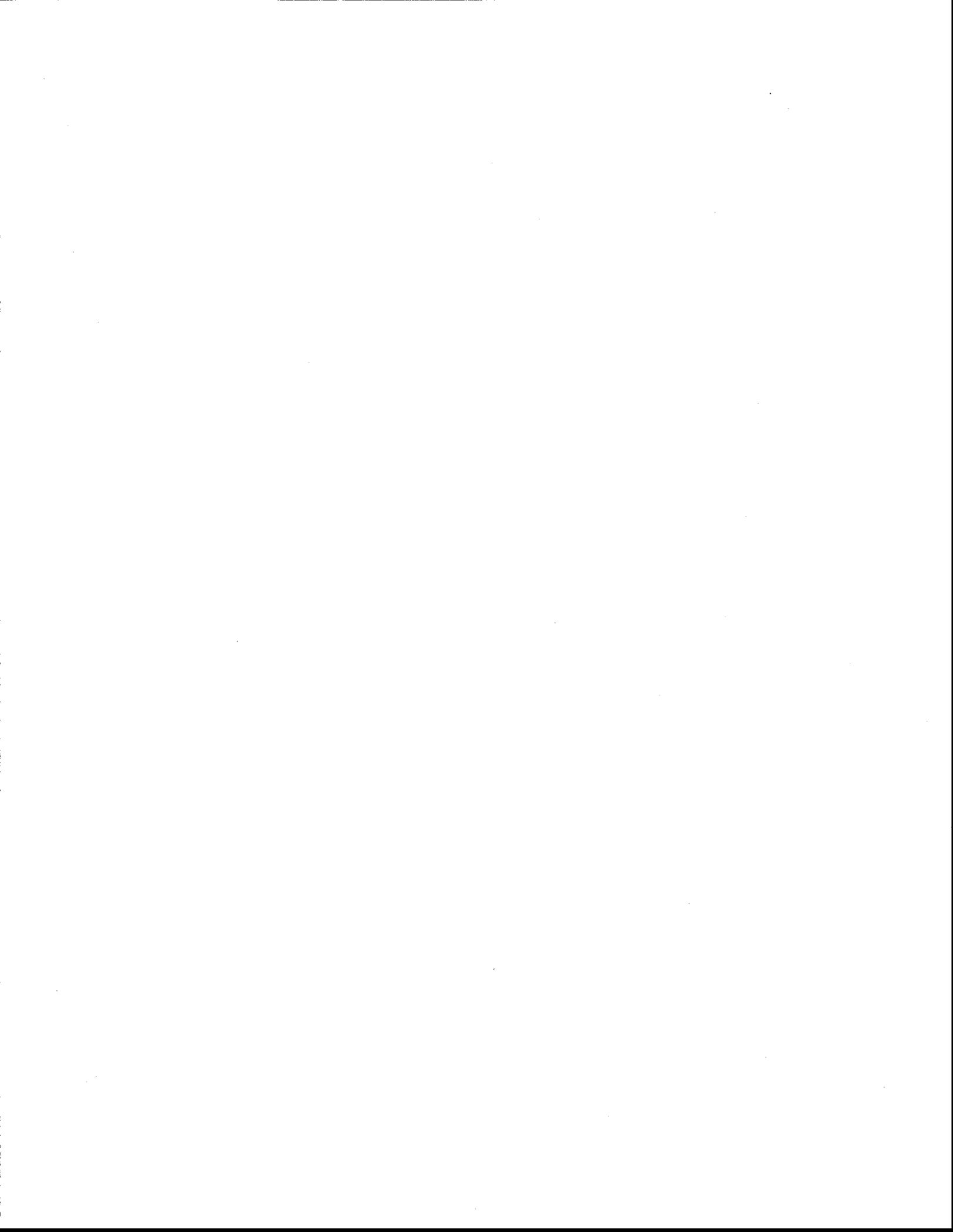
As a result of its findings, the Committee has reconsidered legislative options and thoughtfully crafted two legislative proposals that strike a responsible balance between the constitutionally defined legislative and executive roles. The legislative proposals recommended by the Committee require that some budget authority delegated to the Governor be exercised in tandem with a legislative commission. The commission would be empowered to act on behalf of the full General Assembly to approve or disapprove specific changes to the enacted budget that are initiated by the Governor in his or her role as administrator of the State budget. Because of the Supreme Court Advisory Opinion In Re Separation of Powers cited above, this proposal would require an amendment to the North Carolina Constitution.

In response to the controversy these legislative proposals have generated, three points are important:

- The proposed constitutional amendment, together with its implementing legislation, does not expand the power of the General Assembly. The legislature's preeminent power over the "purse" is assured by current constitutional language. The proposed changes would allow the legislature to exercise its existing budget power in a more workable, effective, and timely manner.
- The proposal would not withdraw all of the Governor's authority to adjust the enacted budget, but would require that adjustments having significant policy potential -- such as transferring funds from one program to another -- be cleared by a legislative commission.
- The proposal would not create a legislative "supercommission" with powers to act unilaterally. It could only respond to initiatives from the Governor, inserting legislative influence where currently the Governor may act without consulting the General Assembly.

For these reasons, the Committee recommends the legislative proposals that appear in Appendices C and D.

APPENDIX A



## APPENDIX A

### CHAPTER 542

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, TO MAKE VARIOUS STATUTORY CHANGES, AND TO MAKE TECHNICAL CORRECTIONS TO CHAPTER 507 OF THE 1995 SESSION LAWS.

The General Assembly of North Carolina enacts:

#### PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1995".

Sec. 2.2. Executive Budget Act Revision (Morgan, Holmes, Gray). The Legislative Research Commission may study the Executive Budget Act and the budget process. The study may consider this State's and other states' laws and policies on the budget process and any other matters it considers necessary in order to recommend a complete revision of the Executive Budget Act and its policies. A study of these revisions shall specifically address the constitutional requirement of separation of powers as it relates to proposing, enacting, and executing a State budget and as it relates to the gubernatorial veto.

Sec. 2.8. Committee Membership. For each Legislative Research Commission committee created during the 1995-96 biennium, the cochairs of the Legislative Research Commission shall appoint the committee membership.

Sec. 2.9. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1996 Regular Session of the 1995 General Assembly, if approved by the cochairs, or the 1997 General Assembly, or both.

Sec. 2.10. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

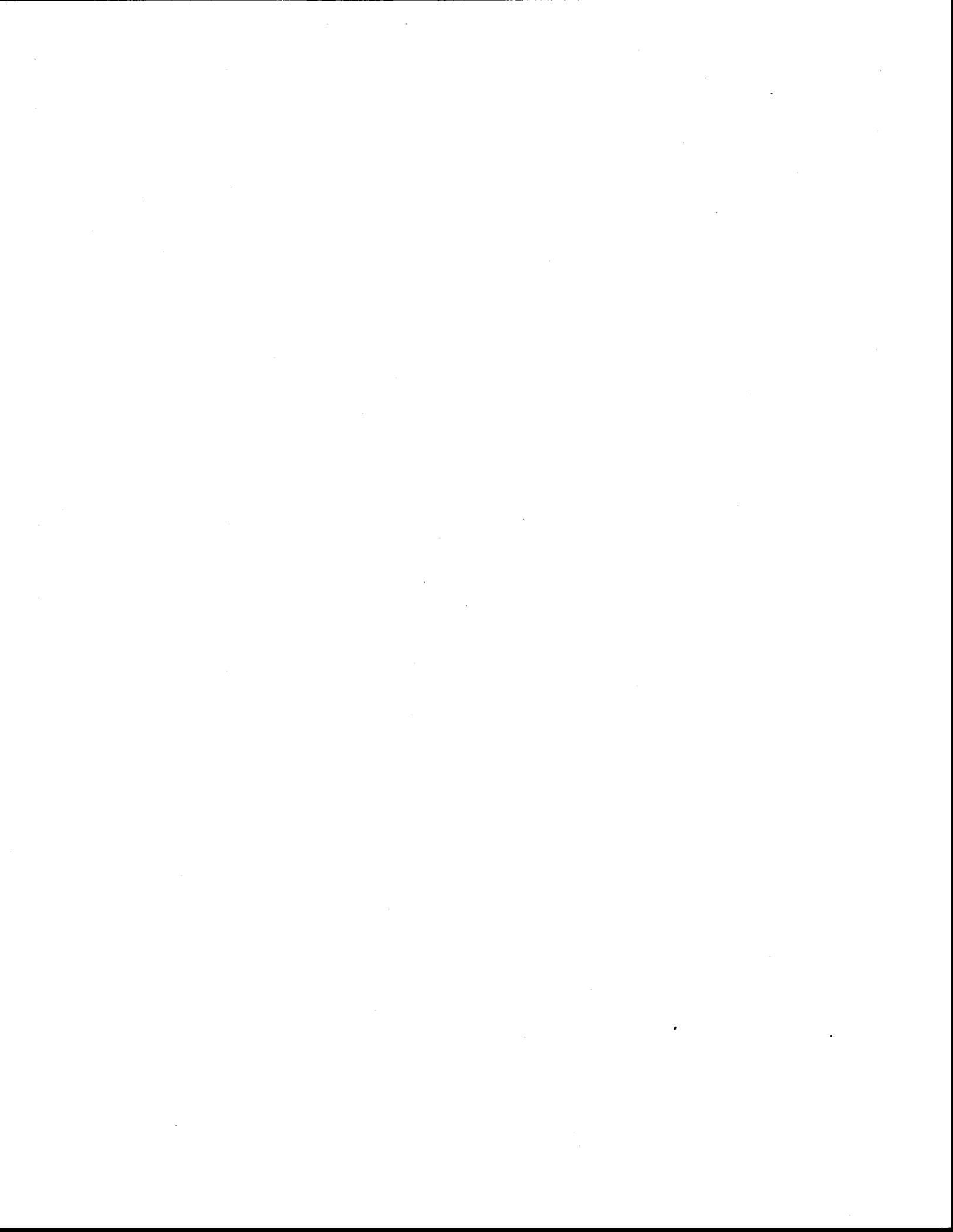
Sec. 2.11. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

#### PART XXVI.-----EFFECTIVE DATE

Sec. 26.1. This act is effective upon ratification.



APPENDIX B



## APPENDIX B

### EXECUTIVE BUDGET ACT REVISION COMMITTEE MEMBERSHIP 1995-1996

**LRC MEMBER:** Senator R. L. Martin  
126 Nelson Street  
P. O. Box 387  
Bethel, NC 27812  
(919) 825-4361

#### PRESIDENT PRO TEMPORE APPOINTMENTS

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Sen. Betsy Cochrane  
122 Azalea Circle  
Advance, NC 27006  
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The Honorable George Daniel  
P. O. Box 179  
Yanceyville, NC 27379  
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Sen. R. L. Martin  
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#### SPEAKER'S APPOINTMENTS

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(910) 722-2311

Rep. Gene G. Arnold  
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(919) 443-4862

Rep. Jerry Braswell  
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(919) 736-4262

Rep. Lanier M. Cansler  
14 Laurel Summit  
Asheville, NC 28803  
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Sen. William N. Martin  
P. O. Box 21325  
Greensboro, NC 27420  
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Sen. T. L. Odom  
1100 South Tryon St.  
Charlotte, NC 29203  
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The Honorable Kenneth C. Royall  
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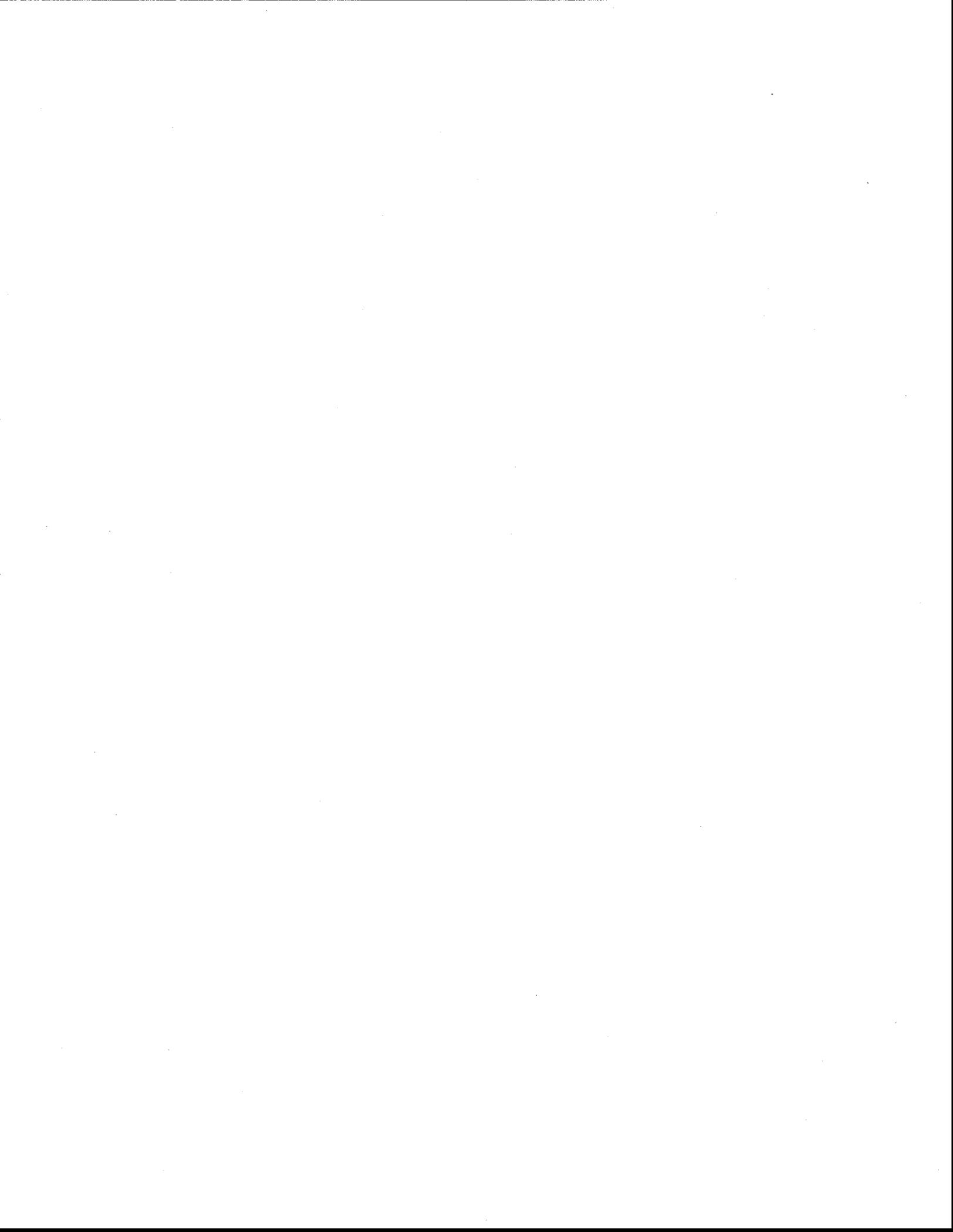
Rep. George M. Holmes  
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Hamptonville, NC 27020  
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Rep. Liston B. Ramsey  
Box 337, Walnut Creek Rd.  
Marshall, NC 28753  
(704) 649-3961

**Clerk:**

Cindy Brooks  
537 Legislative Office Bldg.  
(919) 733-5777

## APPENDIX C



LEGISLATIVE PROPOSAL I  
GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1995

H/S

D

95-LB-401G(3.11)  
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Budget/Const. Amendment.

(Public)

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Sponsors: Representative Gray/Senator Plyler.

---

Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CERTAIN CHANGES IN THE CONSTITUTION FOR  
3 IMPLEMENTING BUDGET ADJUSTMENTS AND ALLOCATIONS.  
4 The General Assembly of North Carolina enacts:  
5           Section 1. Chapter 5 of the Session Laws of 1995 is  
6 amended by adding a new section to read:  
7           "Sec. 1.1. Section 5(3) of Article III of the  
8 Constitution of North Carolina reads as rewritten:  
9           "(3) Budget. The Governor shall prepare and recommend to the  
10 General Assembly a comprehensive budget of the anticipated  
11 revenue and proposed expenditures of the State for the ensuing  
12 fiscal period. The budget as enacted by the General Assembly  
13 shall be administered by the Governor. The General Assembly may  
14 by law provide that the Governor may adjust the enacted budget  
15 and make allocations from reserves designated by law, subject in  
16 certain circumstances to approval by a commission within the  
17 legislative branch composed of members of the General Assembly.  
18 The power to appoint any commission exercising powers under this  
19 paragraph may by law be delegated to members of the General  
20 Assembly.  
21 The total expenditures of the State for the fiscal period  
22 covered by the budget shall not exceed the total of receipts  
23 during that fiscal period and the surplus remaining in the State

1 Treasury at the beginning of the period. To insure that the  
2 State does not incur a deficit for any fiscal period, the  
3 Governor shall continually survey the collection of the revenue  
4 and shall effect the necessary economies in State expenditures,  
5 after first making adequate provision for the prompt payment of  
6 the principal of and interest on bonds and notes of the State  
7 according to their terms, whenever he determines that receipts  
8 during the fiscal period, when added to any surplus remaining in  
9 the State Treasury at the beginning of the period, will not be  
10 sufficient to meet budgeted expenditures. This section shall not  
11 be construed to impair the power of the State to issue its bonds  
12 and notes within the limitations imposed in Article V of this  
13 Constitution, nor to impair the obligation of bonds and notes of  
14 the State now outstanding or issued hereafter.'"

15           Sec. 2. Section 3 of Chapter 5 of the 1995 Session Laws  
16 reads as rewritten:

17           "Sec. 3. The amendments set out in Sections 1 and 2 of  
18 this act shall be submitted to the qualified voters of the State  
19 at the general election in November of 1996, which election shall  
20 be conducted under the laws then governing elections in the  
21 State. Ballots, voting systems, or both may be used in  
22 accordance with Chapter 163 of the General Statutes. The  
23 question to be used in the voting systems and ballots shall be:

24                           `[ ] FOR       [ ] AGAINST

25           Constitutional amendments granting veto power to the  
26 Governor.'

27       The amendment set out in Section 1.1 of this act shall be  
28 submitted to the qualified voters of the State at the general  
29 election in November of 1996, which election shall be conducted  
30 under the laws then governing elections in the State. Ballots,  
31 voting systems, or both may be used in accordance with Chapter  
32 163 of the General Statutes. The question to be used in the  
33 voting systems and ballots shall be:

34                           `[ ] FOR       [ ] AGAINST

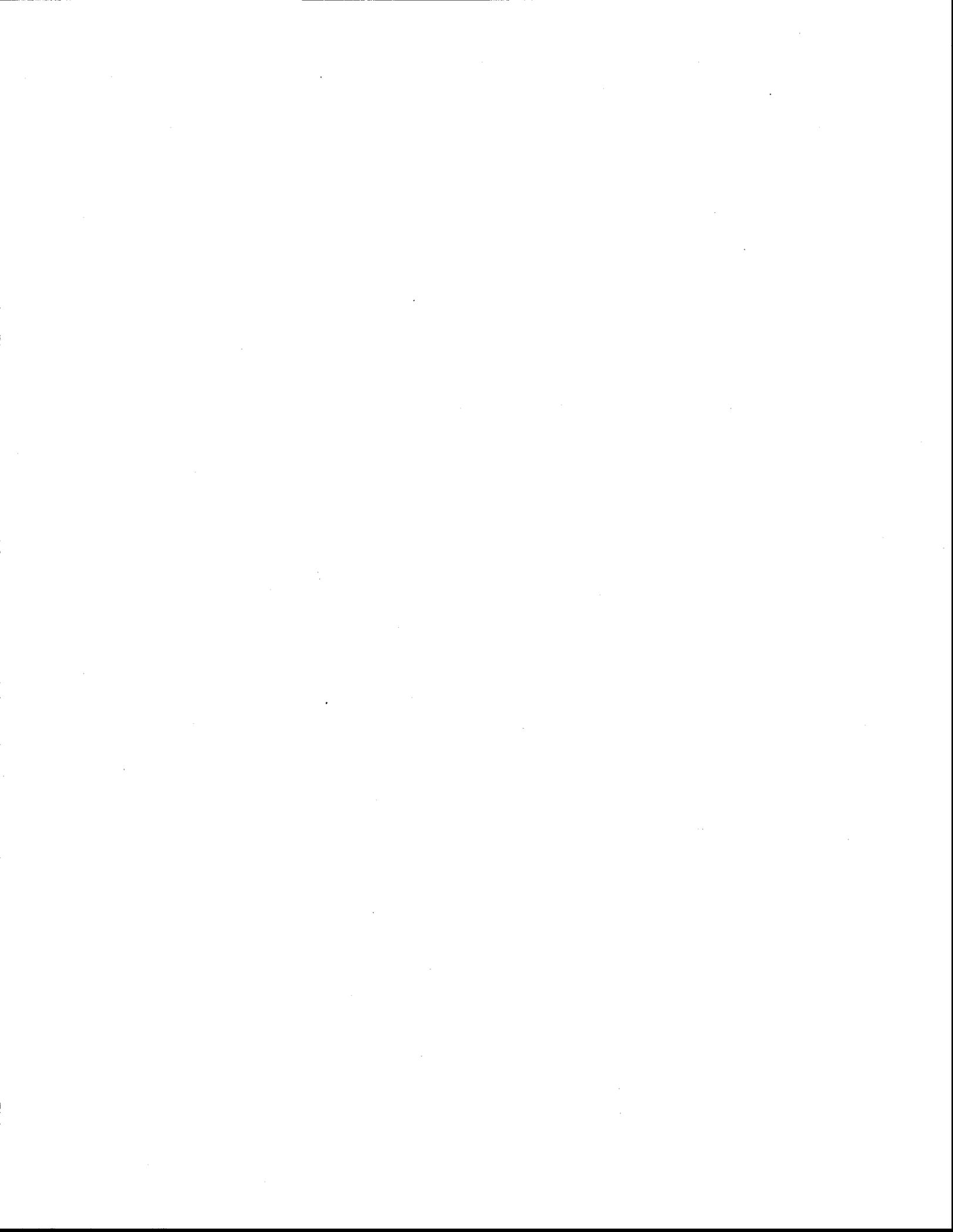
35           Constitutional amendment allowing the Governor to modify  
36 the enacted State budget in accordance with law.'"

37           Sec. 3. Section 4 of Chapter 5 of the 1995 Session Laws  
38 reads as rewritten:

39           "Sec. 4. If a majority of votes cast on the question are  
40 in favor of the amendments set out in Sections 1 and 2 of this  
41 act, the State Board of Elections shall certify the amendments to  
42 the Secretary of State. If a majority of votes cast on the  
43 question are in favor of the amendment set out in Section 1.1 of  
44 this act, the State Board of Elections shall certify the

1 amendment to the Secretary of State. The amendments become  
2 effective January 1, 1997. The Secretary of State shall enroll  
3 the amendments so certified among the permanent records of that  
4 office."

5           Sec. 4. This act is effective upon ratification.



**EXPLANATION OF LEGISLATIVE PROPOSAL I**  
**(Revised 4/18/96)**

**A BILL TO BE ENTITLED AN ACT TO MAKE CERTAIN CHANGES IN THE CONSTITUTION FOR IMPLEMENTING BUDGET ADJUSTMENTS AND ALLOCATIONS**

The General Assembly has tried to provide oversight over the adopted budget by allowing a legislative commission to have approval power over some of the Governor's actions relating to budget transfers and federal funds.

The 1981 session of the General Assembly attempted to deal with this issue two-fold. In Section 82 of Chapter 1127 of the 1981 Session Laws, a new G.S. 143-23(b) was enacted which provided that "...no requested transfer or change from a program line item may be made if the total amount transferred from that line item during the fiscal year would be more than ten percent (10%) of the amount appropriated for that program line item for that fiscal year, unless the Joint Legislative Commission on Governmental Operations has given its prior approval for the transfer." That commission consisted entirely of legislators, some serving ex-officio, and some by appointment of legislative leadership.

That same session in Section 63 of Chapter 1127 of the 1981 Session Laws, the General Assembly created the Joint Legislative Committee to Review Federal Block Grant Funds, consisting of 12 members of the General Assembly. G.S. 120-84, as enacted by that section, provided that no federal block grant funds could be accepted distribution formulas set, or any of a list of seven other occurrences, without the prior approval of that committee if the General Assembly was not in session. (During session, the whole General Assembly would have to approve.)

The North Carolina supreme Court in Advisory Opinion In re Separation of Powers, 305 N.C. 767 (1982), ruled the two statutes unconstitutional. The court first held that the power of the Joint Legislative Commission on Governmental Operations to approve budget transfers violated the provisions of Article III, Section 5(3) of the North Carolina Constitution, which provides that the Governor is to administer the budget as enacted by the General Assembly, and thus violated the separation of powers doctrine of Section 6 of Article 1 of the Constitution.

The court then invalidated G.S. 120-84, which gave a 12-member legislative committee power to act when the General Assembly was not in session. To the extent that G.S. 120-84.5 granted powers to the committee to take legislative actions, the court held this an unconstitutional delegation of legislative authority (the law-making power) from the full General Assembly to a committee. To the extent that the committee was exercising powers rightly belonging to the Governor in administering the budget, the

statute suffered from the same separation of powers problem as had the Joint Legislative Commission on Governmental Operations in approving budget transfers.

Legislative Proposal I amends the Constitution of North Carolina to allow the General Assembly by law to require that certain actions by the Governor to adjust the enacted budget or to make allocations from reserves designated in the budget bill be approved by a legislative commission. The commission would be composed entirely of members of the General Assembly. The General Assembly could either make the appointments to the legislative commission directly or authorize members such as the Speaker or President Pro Tempore to make the appointments.

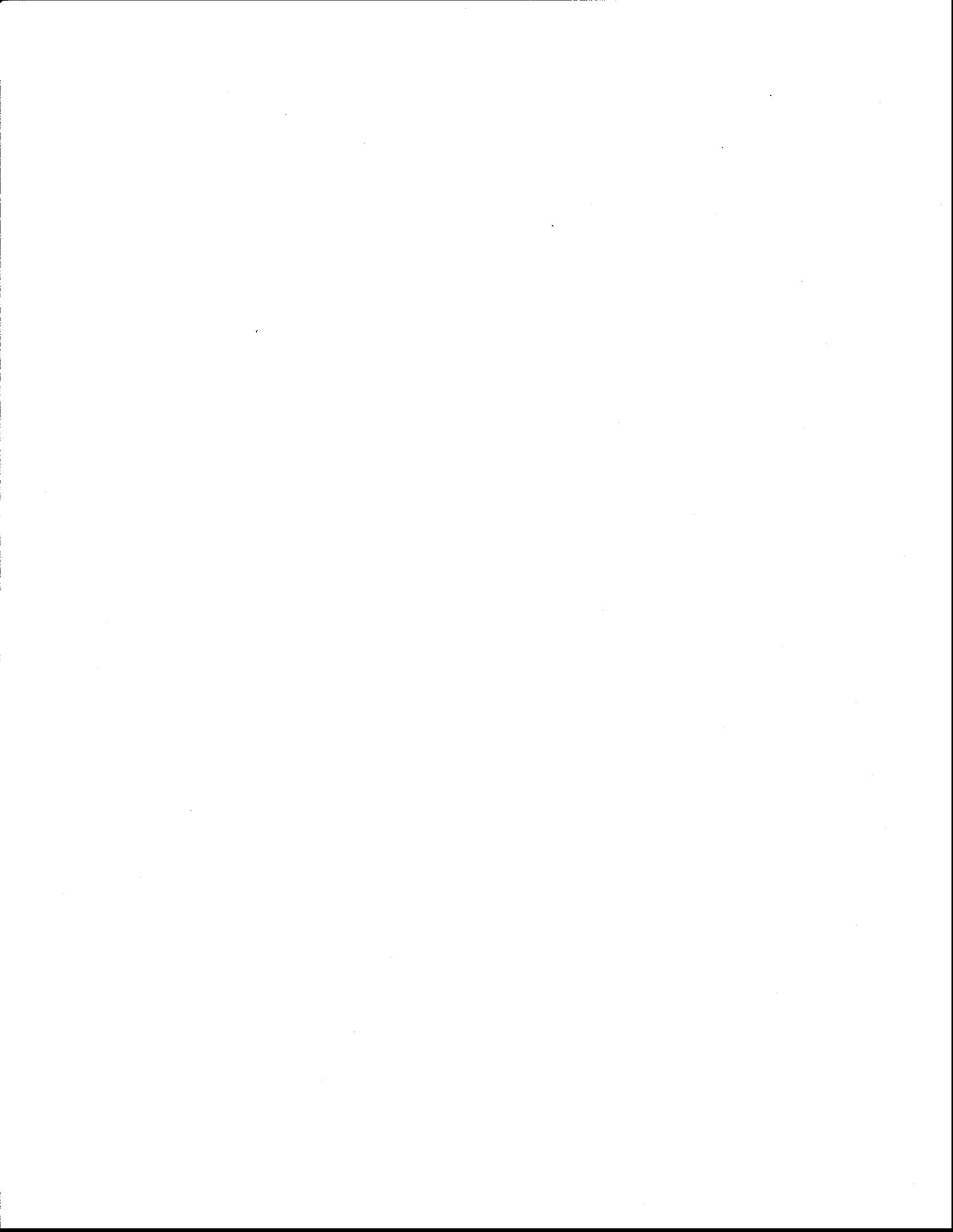
The ballot question will read as follows:

FOR                       AGAINST

Constitutional amendment allowing the Governor to modify the enacted State budget in accordance with law.”

The question will be included on the ballot at the general election in November of this year for approval by the voters.

## APPENDIX D



LEGISLATIVE PROPOSAL II  
GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1995

H/S

D

95-LB-403V(3.11)  
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Budget Adjustments/Conforming. (Public)

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Sponsors: Representative Gray/Senator Plyler.

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Referred to:

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1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CONFORMING CHANGES TO IMPLEMENT BUDGET ADJUSTMENTS  
3 AND ALLOCATIONS.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. (a) Article 1 of Chapter 143 of the General  
6 Statutes is amended by adding a new section to read:  
7 "§ 143-4.2. Budget Adjustment and Allocation Commission.  
8 (a) There is established within the Legislative Branch the  
9 Budget Adjustment and Allocation Commission.  
10 (b) The Budget Adjustment and Allocation Commission shall  
11 consist of 17 members as follows:  
12 (1) The Speaker of the House of Representatives or a  
13 member of the House of Representatives designated  
14 by that officer.  
15 (2) The President Pro Tempore of the Senate or a member  
16 of the Senate designated by that officer.  
17 (3) Five members of the House of Representatives  
18 appointed by the Speaker of the House of  
19 Representatives.  
20 (4) Five members of the Senate appointed by the  
21 President Pro Tempore of the Senate.  
22 (5) Five members of the General Assembly appointed by  
23 the Governor, at least two of whom shall be members

1 of the House of Representatives and at least two of  
2 whom shall be members of the Senate.

3 An appointed member serves a term beginning ten days after  
4 convening of the regular session and ending ten days after  
5 convening of the next regular session, except that: (i) the  
6 appointing officer may remove a member with cause satisfactory to  
7 the appointing officer, and (ii) resignation or removal from  
8 office of a member of the General Assembly vacates that person's  
9 membership on the Commission.

10 A member may serve beyond the end of that member's term of  
11 office as a member of the General Assembly, and an appointing  
12 officer may continue to make appointments until the successor to  
13 that office is chosen. A person designated under subdivisions  
14 (1) or (2) of this subsection serves at the pleasure of the  
15 designating officer.

16 (c) The President Pro Tempore and the Speaker of the House of  
17 Representatives shall serve as cochairs of the Budget Adjustment  
18 and Allocation Commission, except that either of them may  
19 designate a person they appointed or designated to the Budget  
20 Adjustment and Allocation Commission to serve as co-chair at  
21 their pleasure.

22 (d) The Budget Adjustment and Allocation Commission shall meet  
23 monthly at a time and place designated by the Budget Adjustment  
24 and Allocation Commission and shall meet on the joint call of the  
25 co-chairs. A quorum is a majority of the members of the Budget  
26 Adjustment and Allocation Commission.

27 (e) The Budget Adjustment and Allocation Commission has the  
28 following powers and duties under Article III, Section 5(3) of  
29 the Constitution of North Carolina:

30 (1) Approval of allocations from the Contingency and  
31 Emergency Fund.

32 (2) Approval of an overexpenditure of the total  
33 requirements of a program as enacted by the General  
34 Assembly.

35 (3) Approval of any procedures to reduce programs  
36 subsequent to a reduction of ten percent (10%) or  
37 more in the federal fund level certified to a  
38 department and any subsequent changes in  
39 distribution formulas.

40 (4) Approval for extraordinary measures under Article  
41 III, Section 5(3) of the Constitution to effect  
42 necessary economies in State expenditures required  
43 for balancing the budget due to a revenue  
44 shortfall, including, but not limited to, the

1           following: loans among funds, personnel freezes or  
2           layoffs, capital project reversions, program  
3           eliminations, and use of reserves.  
4           (5) Approval of new capital improvement projects funded  
5           from gifts, grants, receipts, special funds, self-  
6           liquidating indebtedness, and other funds or any  
7           combination of funds for any project not  
8           specifically authorized by the General Assembly.  
9           The budget for each capital project must include  
10           projected revenues in an amount not less than  
11           projected expenditures.

12           The Budget Adjustment and Allocation Commission has oversight  
13           of other revenues and expenditures when it finds it appropriate.

14           (f) Notwithstanding subsection (e) of this section or any other  
15           provision of law requiring the approval of the Commission,  
16           whenever an expenditure is required because of an emergency that  
17           poses an imminent threat to public health or public safety, and  
18           is either the result of a natural event, such as a hurricane or a  
19           flood, or an accident, such as an explosion or a wreck, the  
20           Governor may take action under this subsection without approval  
21           of the Commission if the action is determined by the Governor to  
22           be related to the emergency. The Governor shall report to the  
23           Commission on any expenditures made under this subsection no  
24           later than 30 days after making the expenditure and shall  
25           identify in the report the emergency, the type of action taken,  
26           and how it was related to the emergency."

27           (b) The initial appointments under G.S. 143-4.2(b) as enacted  
28 by subsection (a) of this section shall be for terms beginning on  
29 the effective date of that section and ending on the tenth day  
30 after convening of the 1997 Regular Session of the General  
31 Assembly.

32           Sec. 2. G.S. 143-15.3A is amended by adding a new  
33 subsection to read:

34           "(c) Allocations by the Governor from the Repairs and  
35           Renovations Reserve Account require the approval of the Joint  
36           Legislative Commission on Governmental Operations under Article  
37           III, Section 5(3) of the Constitution of North Carolina.

38           Notwithstanding this subsection, whenever an expenditure is  
39           required because of an emergency that poses an imminent threat to  
40           public health or public safety, and is either the result of a  
41           natural event, such as a hurricane or a flood, or an accident,  
42           such as an explosion or a wreck, the Governor may take action  
43           under this subsection without approval of the Commission if the  
44           action is determined by the Governor to be related to the

1 emergency. The Governor shall report to the Commission on any  
2 expenditures made under this subsection no later than 30 days  
3 after making the expenditure and shall identify in the report the  
4 emergency, the type of action taken, and how it was related to  
5 the emergency."

6 Sec. 3. G.S. 143-12 reads as rewritten:

7 "§ 143-12. Bills containing proposed appropriations.

8 (a) The Director shall cause to be prepared and submitted to  
9 the General Assembly the following bills:

10 (1) A bill containing all proposed current operations  
11 appropriations of the budget for each year in the  
12 ensuing biennium, which shall be known as the  
13 'Current Operations Appropriations Bill', and a  
14 bill containing all proposed capital appropriations  
15 of the budget for each year in the ensuing  
16 biennium, which shall be known as the 'Capital  
17 Improvement Appropriations Bill'.

18 (2) If necessary, a bill containing the Director of the  
19 Budget's views on revenue for the ensuing biennium,  
20 which shall be known as the 'Budget Revenue Bill',  
21 and shall provide an amount of revenue for the  
22 ensuing biennium sufficient, in the opinion of the  
23 Director and the Commission, to meet the  
24 appropriations contained in the Current Operations  
25 Appropriations Bill and the Capital Improvement  
26 Appropriations Bill.

27 (3) Repealed by Session Laws 1983 (Regular Session,  
28 1984), c. 1034, s. 153.

29 (b) To the end that all expenses of the State may be brought  
30 and kept within the budget, the Current Operations Appropriations  
31 Bill shall contain a specific sum as a contingent or emergency  
32 appropriation, and shall allocate a specific portion of that sum  
33 to a special reserve to be used solely for purposes as outlined  
34 in ~~G.S. 143-23(a1)(3), (4), and (5).~~ The G.S. 143-23(a1)(2).  
35 Notwithstanding any other provision of law, the manner of the  
36 allocation of such contingent or emergency appropriation shall be  
37 as follows: Any institution, department, commission, or other  
38 agency or activity of the State, or other activity in which the  
39 State is interested, desiring an allotment out of such contingent  
40 or emergency appropriation, shall upon forms prescribed and  
41 furnished by the Director of the Budget, present such request in  
42 writing to the Director of the Budget, with such information as  
43 he may require, and if the Director of the Budget shall approve  
44 such request, in whole or in part, and with the prior consent of

1 the Budget Adjustment and Allocation Commission, he shall  
2 forthwith present the same to the Governor and Council of State,  
3 and upon their order only shall such allotment be made. If the  
4 Director shall disapprove the request of such an allotment out of  
5 the emergency or contingent appropriation, he shall transmit his  
6 refusal and his reason therefor to the Governor and Council of  
7 State, for their information.

8 Funds allocated from the contingent or emergency appropriation  
9 may be used only for the purpose for which they were allocated  
10 and may not be reallocated for another purpose by the Governor.  
11 If the funds are not spent or encumbered for the purpose for  
12 which they were allocated by the end of the fiscal biennium and  
13 if the Governor and the Council of State do not reallocate them  
14 for that same purpose, the funds shall revert to the fund from  
15 which the contingent or emergency appropriation was made. Also,  
16 if the funds are not needed for the purpose for which they were  
17 allocated, the funds shall revert to the fund from which the  
18 contingent or emergency appropriation was made.

19 (c) The Director of the Budget may, in preparation of the  
20 Appropriations and Revenue Bills, seek the advice of the Advisory  
21 Budget Commission. If the Director and the Commission shall not  
22 agree as to the Appropriations and Revenue Bills in substantial  
23 particulars, the Director shall prepare the same, based on his  
24 conclusions and judgment, and the Commission or any of its  
25 members retain the right to submit separately to the General  
26 Assembly such statement of disagreement and the particulars  
27 thereof as they shall find proper to submit as representing their  
28 own views."

29 Sec. 4. G.S. 143-15.3A(b) reads as rewritten:

30 "(b) The funds in the Repairs and Renovations Reserve Account  
31 shall be used only for the repair and renovation of State  
32 facilities and related infrastructure that are supported from the  
33 General Fund. Funds from the Repairs and Renovations Reserve  
34 Account shall be used only for the following types of projects:

- 35 (1) Roof repairs and replacements;
- 36 (2) Structural repairs;
- 37 (3) Repairs and renovations to meet federal and State  
38 standards;
- 39 (4) Repairs to electrical, plumbing, and heating,  
40 ventilating, and air-conditioning systems;
- 41 (5) Improvements to meet the requirements of the  
42 Americans with Disabilities Act, 42 U.S.C. § 12101  
43 et seq., as amended;
- 44 (6) Improvements to meet fire safety needs;

- 1 (7) Improvements to existing facilities for energy
- 2 efficiency;
- 3 (8) Improvements to remove asbestos, lead paint, and
- 4 other contaminants, including the removal and
- 5 replacement of underground storage tanks;
- 6 (9) Improvements and renovations to improve use of
- 7 existing space;
- 8 (10) Historical restoration;
- 9 (11) Improvements to roads, walks, drives, utilities
- 10 infrastructure; and
- 11 (12) Drainage and landscape improvements.

12 Funds from the Repairs and Renovations Reserve Account shall not  
13 be used for new construction or the expansion of the footprint of  
14 an existing facility unless required in order to comply with  
15 federal or State codes or standards.

16 The Director of the Budget shall not use funds in the Repairs  
17 and Renovations Reserve Account unless the use has been approved  
18 by an act of the General ~~Assembly~~— Assembly or by the Joint  
19 Legislative Commission on Governmental Operations under G.S. 143-  
20 15.3A(c)."

21 Sec. 5. G.S. 143-18.1(c) reads as rewritten:

22 "(c) Upon the request of the administration of any State agency  
23 or institution, the Director of the Budget may accept funds by  
24 gift or grant for the construction of a capital improvement  
25 project not specifically provided for or authorized by the  
26 General Assembly. These funds shall be placed in a special  
27 reserve account to be held by the State Treasurer until the end  
28 of the biennium in which the account was established or until the  
29 capital improvement project is authorized by the Director of the  
30 Budget, whichever occurs first. These funds shall be invested and  
31 the interest thereon shall be added to the reserve. If the  
32 project is not authorized by the end of that biennium, the State  
33 Treasurer shall pay the funds accumulated in the special reserve  
34 account to the grantor or donor. Upon the establishment of a  
35 special reserve account under this section, the Director of the  
36 Budget shall notify the Speaker of the House and President of the  
37 Senate of the receipt of the funds and the existence of the  
38 reserve account. Upon the request of the administration of any  
39 State agency or institution, the Governor ~~may~~ may, under G.S.  
40 143-4.2, authorize the construction of a capital improvement  
41 project not specifically authorized by the General Assembly if  
42 such project is to be fully funded by gifts, grants, receipts,  
43 special funds, self-liquidating indebtedness, other funds, or any  
44 combination of funds, but not including funds appropriated from

1 the General Fund. All expenditures under this authorization  
2 shall be handled in full compliance with the provisions of the  
3 Executive Budget Act.

4 The agency shall support its request for such capital  
5 improvement project, or projects, with the following information:  
6 the estimated annual operating costs for (i) utilities; (ii)  
7 maintenance; (iii) repairs; (iv) additional personnel; (v) any  
8 and all other expenses to the State resulting from the addition  
9 of this facility to the plant of the institution. Prior to taking  
10 any action under this section to authorize a project, the  
11 Governor or the Director of the Budget may consult with the  
12 Advisory Budget Commission and the Capital Planning Commission."

13 Sec. 6. G.S. 143-23 reads as rewritten:

14 "§ 143-23. All maintenance funds for itemized purposes;  
15 transfers between objects or line items.

16 (a) All appropriations now or hereafter made for the  
17 maintenance of the various departments, institutions and other  
18 spending agencies of the State, are for the (i) purposes or  
19 programs and (ii) objects or line items enumerated in the  
20 itemized requirements of such departments, institutions and other  
21 spending agencies submitted to the General Assembly by the  
22 Director of the Budget and the Advisory Budget Commission, as  
23 amended by the General Assembly. The function of the Advisory  
24 Budget Commission under this subsection applies only if the  
25 Director of the Budget consults with the Commission in  
26 preparation of the budget.

27 ~~(a1) No transfers may be made between objects or line items in  
28 the budget of any department, institution, or other spending  
29 agency; however, with the approval of the Director of the Budget,  
30 a department, institution, or other spending agency may spend  
31 more than was appropriated for an object or line item if the  
32 overexpenditure is:~~

33 ~~(1) In a purpose or program for which funds were  
34 appropriated for that fiscal period and the total  
35 amount spent for the purpose or program is no more  
36 than was appropriated for the purpose or program  
37 for the fiscal period;~~

38 ~~(2) Required to continue a purpose or program because  
39 of unforeseen events, so long as the scope of the  
40 purpose or program is not increased;~~

41 ~~(3) Required by a court, Industrial Commission, or  
42 administrative hearing officer's order or award or  
43 to match unanticipated federal funds;~~

1           ~~(4) Required to respond to an unanticipated disaster~~  
2           ~~such as a fire, hurricane, or tornado; or~~

3           ~~(5) Required to call out the National Guard.~~

4     ~~The Director of the Budget shall report on a quarterly basis to~~  
5     ~~the Joint Legislative Commission on Governmental Operations, the~~  
6     ~~Fiscal Research Division of the Legislative Services Office, and~~  
7     ~~the State Auditor the reason if the amount expended for a purpose~~  
8     ~~or program is more than the amount appropriated for it from all~~  
9     ~~sources. If the overexpenditure was authorized under subdivision~~  
10    ~~(2) of this subsection, the Director of the Budget shall identify~~  
11    ~~in the report the unforeseen event that required the~~  
12    ~~overexpenditure.~~

13    Notwithstanding the provisions of subsection (a) of this  
14    section, a department, institution, or other spending agency may,  
15    with the approval of the Director of the Budget, spend more than  
16    was appropriated for:

17           (1) An object or line item within a purpose or program  
18           so long as the total amount expended for the  
19           purpose or program is no more than was appropriated  
20           for the purpose or program for the fiscal period;

21           (2) A purpose or program, without the approval of the  
22           Budget Adjustment and Allocation Commission, if the  
23           overexpenditure of the purpose or program is:

24           a. Required by a court, Industrial Commission, or  
25           administrative hearing officer's order;

26           b. Required to respond to an unanticipated  
27           disaster such as a fire, hurricane, or  
28           tornado; or

29           c. Required to call out the National Guard.

30           The Director of the Budget shall report on a  
31           monthly basis to the Budget Adjustment and  
32           Allocation Commission on any overexpenditures under  
33           this subdivision; or

34           (3) A purpose or program, with the approval of the  
35           Budget Adjustment and Allocation Commission in  
36           accordance with G.S. 143-4.2, for any other reason.

37    (a2) Funds appropriated for salaries and wages are also  
38    subject to the limitation that they may only be used for:

39           (1) Salaries and wages or for premium pay, overtime  
40           pay, longevity, unemployment compensation, workers'  
41           compensation, temporary wages, moving expenses of  
42           employees, payment of accumulated annual leave,  
43           certain awards to employees, tort claims, and

- 1 employer's social security, retirement, and  
2 hospitalization payments;
- 3 (2) Contracted personal services if (i) the contract is  
4 for temporary services or special project services,  
5 (ii) the term of the contract does not extend  
6 beyond the fiscal year, (iii) the contract does not  
7 impose obligations on the State after the end of  
8 the fiscal year; and (iv) the total of all  
9 overexpenditures for contracted personal services  
10 approved in a program for a fiscal year does not  
11 exceed the greater of five hundred thousand dollars  
12 (\$500,000) or ten percent (10%) of the lapsed  
13 salary funds in the program for the fiscal year;  
14 and
- 15 (3) Uses for which overexpenditures are permitted by  
16 ~~subdivisions (3), (4), and (5)~~ subdivision (2) of  
17 subsection (a1) of this section but the Director of  
18 the Budget shall include such use and the reason  
19 for it in his ~~quarterly report to the Joint~~  
20 ~~Legislative Commission on Governmental Operations,~~  
21 ~~the Fiscal Research Division of the Legislative~~  
22 ~~Services Office, and the State Auditor, monthly~~  
23 ~~report to the Budget Adjustment and Allocation~~  
24 Commission.
- 25 Lapsed salary funds that become available from vacant positions  
26 are also subject to the limitation that they may not be used for  
27 new permanent employee positions or to raise the salary of  
28 existing employees.
- 29 ~~(a3) The requirements in this section that the Director of the~~  
30 ~~Budget report to the Joint Legislative Commission on Governmental~~  
31 ~~Operations and the State Auditor shall not apply to expenditures~~  
32 ~~of receipts by entities that are wholly receipt supported, except~~  
33 ~~for entities supported by the Wildlife Resources Fund.~~
- 34 ~~(a4) The State Auditor shall review the report received from~~  
35 ~~the Director of the Budget to ensure that the transfer complied~~  
36 ~~with the intent and the provisions of this Article and shall~~  
37 ~~report the Auditor's findings to the Joint Legislative Commission~~  
38 ~~on Governmental Operations and to the Fiscal Research Division.~~
- 39 (b) Repealed by Session Laws 1985, c. 290, s. 8.
- 40 (c) Transfers or changes as between objects or line items in  
41 the budget of the Senate may be made by the President Pro Tempore  
42 of the Senate.

1 (d) Transfers or changes as between objects or line items in  
2 the budget of the House of Representatives may be made by the  
3 Speaker of the House of Representatives.

4 (e) Transfers or changes as between objects or line items in  
5 the budget of the General Assembly other than of the Senate and  
6 House of Representatives may be made jointly by the President Pro  
7 Tempore of the Senate and the Speaker of the House of  
8 Representatives.

9 (f) As used in this section:

10 (1) 'Object or line item' means a budgeted expenditure  
11 or receipt in the budget enacted by the General  
12 Assembly that is designated by (i) a thirteen-digit  
13 code in the 1000-object code series or (ii) an  
14 eleven-digit code in all other object code series,  
15 in accordance with the Budget Code Structure and  
16 the State Accounting System Uniform Chart of  
17 Accounts set out in the Administrative Policies and  
18 Procedures Manual of the Office of the State  
19 Controller.

20 (2) 'Purpose or program' means a group of objects or  
21 line items for support of a specific activity  
22 outlined in the budget adopted by the General  
23 Assembly that is designated by a nine-digit fund  
24 code in accordance with the Budget Code Structure  
25 and the State Accounting System Uniform Chart of  
26 Accounts set out in the Administrative Policies and  
27 Procedures Manual of the Office of the State  
28 Controller."

29 Sec. 7. G.S. 143-25 reads as rewritten:

30 "§ 143-25. Maintenance appropriations dependent upon adequacy of  
31 revenues to support them.

32 All maintenance appropriations now or hereafter made are hereby  
33 declared to be maximum, conditional and proportionate  
34 appropriations, the purpose being to make the appropriations  
35 payable in full in the amounts named herein if necessary and then  
36 only in the event the aggregate revenues collected and available  
37 during each fiscal year of the biennium for which such  
38 appropriations are made, are sufficient to pay all of the  
39 appropriations in full; otherwise, the said appropriations shall  
40 be deemed to be payable in such proportion as the total sum of  
41 all appropriations bears to the total amount of revenue available  
42 in each of said fiscal years. The Director of the Budget is  
43 hereby given full power and authority to examine and survey the  
44 progress of the collection of the revenue out of which such

1 appropriations are to be made, and to declare and determine the  
2 amounts that can be, during each quarter of each of the fiscal  
3 years of the biennium properly allocated to each respective  
4 appropriation. In making such examination and survey, he shall  
5 receive estimates of the prospective collection of revenues from  
6 the Secretary of Revenue and every other revenue collecting  
7 agency of the State. The Director of the Budget may reduce all of  
8 said appropriations pro rata when necessary to prevent an  
9 overdraft or deficit to the fiscal period for which such  
10 appropriations are made. The Governor may also reduce all of  
11 said appropriations pursuant to Article III, Section 5(3) of the  
12 Constitution with approval of the Budget Adjustment and  
13 Allocation Commission under G.S. 143-4.2 if approval is required  
14 by that section. The purpose and policy of this Article are to  
15 provide and insure that there shall be no overdraft or deficit in  
16 the general fund of the State at the end of the fiscal period,  
17 growing out of appropriations for maintenance and the Director of  
18 the Budget is directed and required to so administer this Article  
19 as to prevent any such overdraft or deficit. Prior to taking any  
20 action under this section to reduce appropriations pro rata, the  
21 Governor may consult with the Advisory Budget Commission."

22           Sec. 8. G.S. 143-27 reads as rewritten:  
23 "§ 143-27. Appropriations to educational, charitable and  
24 correctional institutions are in addition to receipts by them.  
25 All appropriations now or hereafter made to the educational  
26 institutions, and to the charitable and correctional  
27 institutions, and to such other departments and agencies of the  
28 State as receive moneys available for expenditure by them are  
29 declared to be in addition to such receipts of said institutions,  
30 departments or agencies, and are to be available as and to the  
31 extent that such receipts are insufficient to meet the costs  
32 anticipated in the budget authorized by the General Assembly, of  
33 maintenance of such institutions, departments, and agencies;  
34 Provided, however, that if the receipts, other than gifts and  
35 grants that are unanticipated and are for a specific purpose  
36 only, collected in a fiscal year by an institution, department,  
37 or agency exceed the receipts certified for it in General Fund  
38 Codes or Highway Fund Codes, the Director of the Budget shall  
39 decrease the amount he allots to that institution, department, or  
40 agency from appropriations from that Fund by the amount of the  
41 excess, unless use of the excess for the overexpenditure is  
42 approved under G.S. 143-4.2. ~~the Director of the Budget finds~~  
43 ~~that the appropriations from that Fund are necessary to maintain~~  
44 ~~the function that generated the receipts at the level anticipated~~

1 ~~in the certified Budget Codes for that Fund.~~ Notwithstanding the  
2 foregoing provisions of this section, receipts within The  
3 University of North Carolina realized in excess of budgeted  
4 levels shall be available, up to a maximum of ten percent (10%)  
5 above budgeted levels, for each Budget Code, in addition to  
6 appropriations, to support the operations generating such  
7 receipts, as approved by the Director of the Budget.

8 ~~The Office of State Budget and Management shall report to the~~  
9 ~~Joint Legislative Commission on Governmental Operations and to~~  
10 ~~the Fiscal Research Division of the Legislative Services Office~~  
11 ~~within 30 days after the end of each quarter on expenditures of~~  
12 ~~receipts in excess of the amounts certified in General Fund Codes~~  
13 ~~or Highway Fund Codes that did not result in a corresponding~~  
14 ~~reduced allotment from appropriations from that Fund.~~

15 Sec. 9. G.S. 116-30.2 reads as rewritten:

16 "§ 116-30.2. Appropriations to special responsibility  
17 constituent institutions.

18 All General Fund appropriations made by the General Assembly  
19 for continuing operations of a special responsibility constituent  
20 institution of The University of North Carolina shall be made in  
21 the form of a single sum to each budget code of the institution  
22 for each year of the fiscal period for which the appropriations  
23 are being made. Notwithstanding G.S. 143-4.2, 143-23(a1), ~~G.S.~~  
24 ~~143-23(a2)~~, and ~~G.S.~~ 143-23(a3), each special responsibility  
25 constituent institution may expend the General Fund monies so  
26 appropriated to it in the manner deemed by the Chancellor to be  
27 calculated to maintain and advance the programs and services of  
28 the institutions, consistent with the directives and policies of  
29 the Board of Governors. The preparation, presentation, and review  
30 of General Fund budget requests of special responsibility  
31 constituent institutions shall be conducted in the same manner as  
32 are requests of other constituent institutions. The quarterly  
33 allotment procedure established pursuant to G.S. 143-17 shall  
34 apply to the General Fund appropriations made for the current  
35 operations of each special responsibility constituent  
36 institution. All General Fund monies so appropriated to each  
37 special responsibility constituent institution shall be recorded,  
38 reported, and audited in the same manner as are General Fund  
39 appropriations to other constituent institutions."

40 Sec. 10. G.S. 143-16.3 reads as rewritten:

41 "§ 143-16.3. No expenditures for purposes for which the General  
42 Assembly has considered but not enacted an appropriation.

43 Notwithstanding any other provision of law, no funds from any  
44 source, except for gifts, grants, and funds allocated from the

1 Contingency and Emergency Fund ~~by the Council of State, in~~  
2 accordance with G.S. 143-12(b), may be expended for any purpose,  
3 position, or other expenditure for which the General Assembly has  
4 considered but not enacted an appropriation of funds for the  
5 current fiscal period. For the purpose of this section, the  
6 General Assembly has considered a purpose, position, or other  
7 expenditure when that purpose is included in a ~~bill~~ bill,  
8 amendment, or petition ~~or~~ and when any committee of the Senate or  
9 the House of Representatives deliberates on that purpose."

10           Sec. 11. G.S. 116-30.1 reads as rewritten:

11 "**§ 116-30.1. Special responsibility constituent institutions.**

12 The Board of Governors of The University of North Carolina,  
13 acting on recommendation made by the President of The University  
14 of North Carolina after consultation by him with the State  
15 Auditor, may designate one or more constituent institutions of  
16 The University as special responsibility constituent  
17 institutions. That designation shall be based on an express  
18 finding by the Board of Governors that each institution to be so  
19 designated has the management staff and internal financial  
20 controls that will enable it to administer competently and  
21 responsibly all additional management authority and discretion to  
22 be delegated to it. The Board of Governors, on recommendation of  
23 the President, shall adopt rules prescribing management staffing  
24 standards and internal financial controls and safeguards,  
25 including the lack of any significant exceptions or audit  
26 findings in the annual financial audit by the State Auditor's  
27 Office, that must be met by a constituent institution before it  
28 may be designated a special responsibility constituent  
29 institution and must be maintained in order for it to retain that  
30 designation. These rules shall not be designed to prohibit  
31 participation by a constituent institution because of its size.  
32 These rules shall establish procedures for the President and his  
33 staff to review the annual financial audit reports or any other  
34 special or performance audit reports issued by the State  
35 Auditor's Office for each special responsibility constituent  
36 institution. The President shall take immediate action regarding  
37 reported weaknesses in the internal control structure,  
38 deficiencies in the accounting records, and noncompliance with  
39 rules and regulations. In any instance where such audit  
40 exceptions are identified, the President shall notify the  
41 Chancellor and each member of the Board of Trustees of the  
42 particular special responsibility constituent institution that  
43 such exceptions must be resolved to the satisfaction of the State  
44 Auditor and the President of The University within a three month

1 period commencing with the date of receipt of the published  
2 financial audit report. If the exceptions are not satisfactorily  
3 resolved within a three month period, the President of The  
4 University shall recommend to the Board of Governors at its next  
5 meeting that the designation of the particular institution as a  
6 special responsibility constituent institution be terminated  
7 until such time as the exceptions are resolved to the  
8 satisfaction of the State Auditor and the President of The  
9 University of North Carolina. The action of the Board of  
10 Governors terminating the designation shall state the reasons for  
11 the termination, and a copy shall be sent to each member of the  
12 Board of Trustees of that particular institution. However, once  
13 the designation as a special responsibility constituent  
14 institution has been withdrawn by the Board of Governors,  
15 reinstatement may not be effective until the beginning of the  
16 following fiscal year at the earliest. Any actions taken by the  
17 Board of Governors with respect to withdrawal or reinstatement of  
18 an institution's status as a special responsibility constituent  
19 institution shall be reported immediately to the Joint  
20 Legislative Education Oversight Committee.

21 The rules established under this section shall include review  
22 and consultation with the State Auditor, the Director of the  
23 Office of State Personnel, and the Director of the Division of  
24 State Purchasing and Contracts in ascertaining whether or not a  
25 constituent institution has the management staff and internal  
26 financial controls to administer the additional authorities  
27 authorized under G.S. 116-30.2, G.S. 116-30.4, and G.S. 143-53.1.  
28 Such review and consultation must take place no less frequently  
29 than once each biennium."

30       Sec. 12. Sections 1 through 11 of this act shall become  
31 effective only if the constitutional amendment proposed by  
32 Section 1.1 of Chapter 5 of the Session Laws of 1995 is approved  
33 as provided by Sections 3 and 4 of Chapter 5 of the Session Laws  
34 of 1995, and if so approved, Sections 1 through 11 of this act  
35 shall become effective upon certification of the results of that  
36 election.

**EXPLANATION OF LEGISLATIVE PROPOSAL II**  
**(Revised 4/18/96)**

**A BILL TO BE ENTITLED AN ACT TO MAKE CONFORMING CHANGES TO IMPLEMENT BUDGET ADJUSTMENTS AND ALLOCATIONS.**

Legislative Proposal II is the "implementing" legislation for Legislative Proposal I. Section one of Legislative Proposal II establishes the Budget Adjustment and Allocation Commission within the legislative branch. The Commission is composed of 17 legislative members as follows:

- The Speaker of the House of Representatives or the Speaker's designee
- The President Pro Tempore of the Senate, or the President Pro Tempore's designee
- Five House members appointed by the Speaker
- Five Senate members appointed by the President Pro Tempore
- Five members of the General Assembly appointed by the Governor. Of the five members at least two must be appointed from the House of Representatives and at least two appointed from the Senate.

The Cochairs for the Commission are the President Pro Tempore of the Senate and the Speaker of the House of Representatives. However, both of those officials may designate another of their appointees or designees to the Commission to serve as cochairs at the pleasure of the designating official.

A Commission member's term of office begins ten days after convening of a Regular Session and ends at the same point in the next regular session. However, the initial appointees will serve from certification of passage of the Constitutional amendment until convening of the 1997 Regular Session. A member vacates office upon resignation or removal from the General Assembly, but otherwise can continue serving past the end of the member's term of office (until new members are appointed). Under the Legislative Proposal, the Speaker and President Pro Tempore can continue to fill vacancies during the period beginning at the end of their term and ending when a new Speaker or President Pro Tempore is elected.

The Commission must have regular monthly meetings at a time and place designated by the Commission and meets at the joint call of the co-chairs. A quorum is a majority of the members of the Budget Adjustment and Allocation Commission.

The powers of the Budget Adjustment and Allocation Commission are set out in subsection (e) of G.S. 143-4.2. That subsection provides that the Commission has the power to approve all of the following:

- Allocations from the Contingency and Emergency Fund
- An overexpenditure of the total requirements of a program .

- Any procedure to reduce programs as a result of a cut in federal funds of ten percent or more.
- Extraordinary measures under Article III, Section 5(3) of the Constitution taken to balance the State budget due to a revenue shortfall.
- New capital improvement projects not specifically authorized by the General Assembly.

The Commission also has the authority to oversee other revenue and expenditures when it finds it appropriate.

The Legislative Proposal also addresses emergencies and defines emergency situations in which the Governor may take budgetary action without prior approval of the Commission. The Governor may take budgetary action without prior approval of the Budget Adjustment and Allocation Commission if: (i) an emergency poses an imminent threat to public health or public safety, (ii) is the result of either a natural event or an accident, and (iii) the budgetary action is determined by the Governor to be related to the emergency.

Section two of the Legislative Proposal provides that the Joint Legislative Commission on Governmental Operations will have the power to approve or reject allocations from the Reserve for Repairs and Renovations, rather than the new Commission created by the act. It also allows the Governor the same authority to act in an emergency situation as discussed in the preceding paragraph.

Sections three and four of the Legislative Proposal make conforming statutory changes.

Section five of the Legislative Proposal makes conforming statutory changes and also provides that capital improvement projects not specifically authorized by the General Assembly may be authorized by the Governor if the proposed project is fully funded and is authorized by the Budget Adjustment and Allocation Commission.

Section six of the Legislative Proposal rewrites subsection (a1) of G.S. 143-23 to read in the positive rather than the negative. Subsection (a1) provides that the Governor may transfer funds to allow overexpenditures for the following :

- An object or line item within a purpose or program. However, the total amount spent for the purpose or program may not exceed the amount appropriated for that purpose or program for the fiscal period. (This does not change the current law.)
- A purpose or program if the overexpenditure is required: (i) by a court, Industrial commission, or administrative hearing officer's order, (ii) to respond to an unanticipated disaster, or (iii) to call out the National Guard. The Governor must report regarding any overexpenditures of this type. (Transfers for

this type of overexpenditures are also allowed under current law.)

- A purpose or program for any other reason, with the approval of the Budget Adjustment and Allocation Commission. (This provision is new and allows transfers not currently authorized under current law.)

Section seven of the Legislative Proposal makes conforming statutory changes.

Section eight of the Legislative Proposal makes conforming statutory changes but allows the State's university system to continue to have the flexibility to budget up to ten percent of receipts collected above the amount originally budgeted without asking for additional authority to use those additional funds.

Section nine of the Legislative Proposal makes conforming statutory changes needed to allow the university system to continue to have the budgetary flexibility that it now has.

Section ten of the Legislative Proposal makes conforming statutory changes and also clarifies when a purpose has been considered by the General Assembly and so is not a purpose for which State funds may be expended for that particular fiscal period.

Section eleven of the Legislative Proposal amends G.S. 116-30.1. G.S. 116-30.1 allows the Board of Governors of The University of North Carolina upon recommendation by the President of The University of North Carolina to designate one or more of the 16 constituent institutions as special responsibility constituent institutions. A university designated as a special responsibility constituent institution has the flexibility to take certain budgetary actions in accordance with law. Currently, all sixteen constituent institutions have that designation.

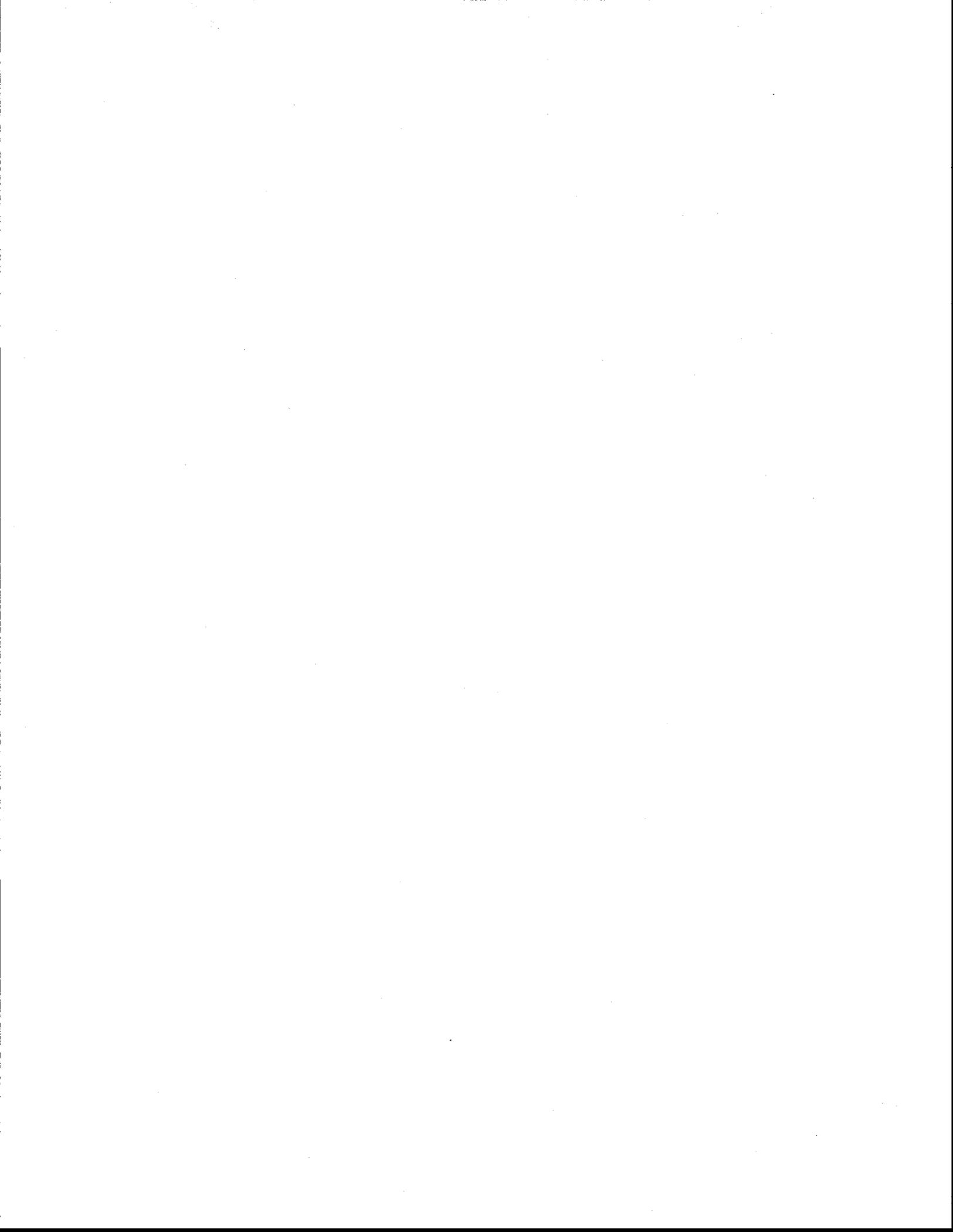
The amending language requires the Board of Governors to adopt rules that establish procedures for the President of the university system and the president's staff to review annual audits of each special responsibility institution and identify any exceptions. If, after notification of the audit exceptions, a special responsibility institution fails to correct the exceptions satisfactorily within three months, the President of The University of North Carolina shall recommend to the Board of Governors that the institution's designation as a special responsibility institution be withdrawn.

Any action taken by the Board of Governors to terminate an institution's designation shall state the reason for the termination and a copy shall be sent to each member of the Board of Trustees of the institution. Also, any action to withdraw or reinstate a university's designation as a special responsibility institution shall be reported to the Joint Legislative Education Oversight Committee. The State Auditor, Director of

the Office of State Personnel, and the Director of State Purchasing and Contracts must be consulted about each university's financial controls at least once each biennium.

Section twelve of the Legislative Proposal is the effective date clause. It provides that this Legislative Proposal becomes effective only if the Constitutional amendment set out in Legislative Proposal I is approved by referendum. If the Constitutional amendment is approved, then Legislative Proposal II becomes effective upon certification of the results of that election.

APPENDIX E



## MINORITY REPORT

Appendix C of this report contains a bill that proposes a constitutional amendment to be voted on separately from the gubernatorial veto amendment that will be presented to the voters in the November general election. This report is presented pursuant to a motion made in the Executive Budget Act Revision Committee when that bill was deliberated and expresses the position of Representative Gene Arnold and five other committee members who did not prevail in a vote on that bill.

The vote on which Representative Arnold and the other five committee members did not prevail was on an amendment that changed the ballot question as presented to the committee to the one contained in the bill in Appendix C. As originally presented to the committee, the budget ballot issue was tied to the gubernatorial veto vote. A vote of yes on veto was also a vote of yes on authorizing the General Assembly to create a committee composed of legislators that can exercise oversight over the budget in specified circumstances. The amendment severed the tie. The amendment passed in a vote of 8 "yes" and 6 "no" votes.

As expressed at the committee meeting, those voting on the losing side of the amendment view the proposed budget amendment as an integral part of establishing the proper balance of power between the legislative and executive branches in light of the pending gubernatorial veto. They therefore support linking the budget ballot question to the veto ballot question.